

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CUONG HUY DAO,

Plaintiff,

v.

P. TABOR, et al.,

Defendants.

No. 2:22-cv-00846-TLN-CSK

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

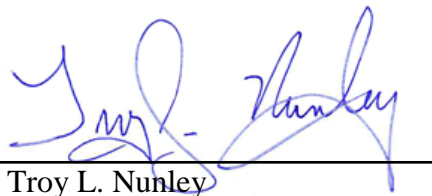
On May 17, 2024, the magistrate judge filed findings and recommendations herein which were served on all parties, and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 93.) Plaintiff filed objections to the findings and recommendations. (ECF No. 94.)

The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the Court finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations, filed on May 17, 2024 (ECF No. 93), are ADOPTED IN FULL;
2. Plaintiff's claim alleging Defendants used excessive force when they removed him from the holding cell and forced Plaintiff to the new cell is DISMISSED;
3. Defendants' Motion for Summary Judgment (ECF No. 80) is GRANTED as to Plaintiff's claim alleging Defendants used excessive force when they slammed Plaintiff to the ground and DENIED as to Plaintiff's claim alleging Defendants used excessive force after they brought Plaintiff to the ground;
4. This action will proceed on Plaintiff's claim alleging Defendants used excessive force after they brought Plaintiff to the ground; and
5. This matter is referred back to the magistrate judge for further pretrial proceedings.

Date: September 20, 2024



Troy L. Nunley
United States District Judge